Supreme Court, U.S.
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No. 99-

IN THE

Supreme Court of the United States

CREFLO A. DOLLAR, JR.,

Petitioner,

v.

JANICE ITSON HOLYFIELD,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the Supreme Court of Georgia has sanctioned a departure from the accepted and usual course of judicial proceedings by the lower court, as to call for the exercise of the Surpeme Courts power of supervision.

Whether O.C.G.A. § 5-6-35(a)(2) is vague and ambiguous as to non-party witness so as to be in conflict with Federal Fifth Amendment right to due process.

PARTIES TO THE PROCEEDINGS

Evander Holyfield and Janice Itson Holyfield are the original parties to this action. Creflo A. Dollar, Jr. is a non-party witness.

The Attorney General of the State of Georgia is also being served herein.

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Petitioner Creflo A. Dollar, Jr., respectfully requests that a Writ of Certiorari be issued to review the judgment of the Supreme Court of the State of Georgia.

OPINIONS BELOW

The Opinion of the Supreme Court of the State of Georgia, dated February 25, 2000, is not published. (App. A). The Opinion of the Superior Court of Fayette County, dated December 21, 1999, is also not published (App. B).

STATEMENT OF JURISDICTION

The judgment of the Supreme Court of the State of Georgia was dated and entered on February 25, 2000. The Supreme Court of the State of Georgia denied a timely Motion for Reconsideration on March 9, 2000 (App. C). Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment of the United States Constitution provides in relevant part; "No person shall . . . be deprived of life, liberty, or property, without due process of law".

O.C.G.A. § 5-6-35(a)(2) provides in relevant part:

> Cases requiring application for appeal; contents, filing, and service of application; exhibits; response by opposing party; issuance of appellate court order regarding appeal; procedure; supersedeas; jurisdiction of appeal.

(a) Appeals in the following cases shall be taken as provided in this Code section:

(2) Appeals from judgments or orders in divorce, alimony, child custody, and other domestic relations cases including, but not limited to, granting or refusing a divorce or temporary or permanent alimony, awarding or refusing to change child custody, or holding or declining to hold persons in contempt of such alimony or child custody judgment or orders.

STATEMENT OF THE CASE

The fundamental questions are whether application of O.C.G.A. § 5-6-35(a)(2) to a non-party witness is in conflict with Fifth Amendment rights to due process and whether the Supreme Court of Georgia has sanctioned a departure from the accepted and usual course of judicial proceedings by the lower court, as to call for the exercise of Supreme Court's power of supervision.

A. Backround Of the March 9, 2000 opinion

Creflo A. Dollar, Jr., Petitioner herein, is the senior pastor of World Changers Ministries Christian Center. In that capacity he provided marital counseling to Evander Holyfield and Janice Holyfield. Evander Holyfield filed for divorce in the Fayette County Superior Court. Janice Holyfield served a subpoena duces tecum on petitioner on June 14, 1999, requesting among other things, the production of marital counseling records.

Petitioner filed a Motion for Protective Order on June 28, 1999 contending that the clergy privilege pursuant to O.C.G.A § 24-9-22 rendered him not compellable or competent to testify as a witness in the action. Further, petitioner objected to the Request for Production of documents and the deposition on the basis that testifying in a divorce action between two members of his congregation, to whom he provided marital counseling violates his religious beliefs and practices in violation of the Establishment Clause and Free Exercise Clause of the U.S. Constitution.

B. Proceedings Below

On August 3, 1999, defendant Janice Holyfield filed a Response to Motion for Protective Order and a Motion for Contempt. On August 27, 1999 the trial Court denied petitioner's Motion for Protective Order and denied Janice Holyfield's Motion for Contempt. This order was entered September 21, 1999. Petitioner filed a Notice of direct appeal as a non party witness on September 29, 1999.

On November 8, 1999 , defendant Janice Holyfield filed a Second Motion for Contempt. Petitioner was never personally served with his second Motion for Contempt. Petitioner filed a Motion to Dismiss contending that he was not served and no proof of service was provided. Further petitioner contended that the trial court did not have jurisdiction to hear the matter pursuant to O.C.G.A. § 9-11-37(a)(1) and § 9-11-37(b)(1) which requires that the Motion for Contempt be filed in the County where the deposition is to be taken. In the instant case that County would have been Cobb County instead of Fayette County, Georgia. Also, Petitioner's Motion to Dismiss was filed on the basis that the Notice of Appeal filed on September 29, 1999 had not been dismissed. Therefore a supersedeas attached.

O.C.G.A. § 9-11-34(c) and O.C.G.A. § 9-11-37(a)(2). Petitioner contends that the Trial Court was without jurisdiction to proceed further in this case because of the notice of appeal filed in the case on September 29, 1999. There was never a motion to dismiss the appeal filed.

The trial court denied Petitioner's Motion to Dismiss and Janice Holyfield's Motion for Contempt. However the trial court scheduled the deposition at the court on December 21, 1999. The trial court refused to enter its December 16, 1999 order until the morning of the scheduled deposition in response to Petitioner's Motion for Mandmus and Prohibition which precluded Petitioner's right to appeal the decision prior to the scheduled deposition.

Petitioner filed a Motion to Disqualify or Recuse based on exparte communications between counsel representing defendant Janice Holyfield and the trial court at a hearing where Petitioner was not required to be present. Petitioner's request for the court transcript was denied. The trial Court ruled that the Motion was untimely and denied the Motion. The court held Petitioner in Contempt on December 21, 1999. Petitioner filed a direct appeal as a non party witness pursuant to *Ramsey v. Ramsey*, 231 Ga. 334, 201 S.E.2d 429 (1973), "when an individual is adjudged in contempt the Trial Court is done with the matter and to require an application for discharge, as a condition precedent to appeal, is usually a futile and empty gesture." On February 25, 2000, the Supreme Court of the State of Georgia dismissed the appeal on the grounds that it should have been filed by application pursuant to O.C.G.A. § 5-6-35(a)(2). Petitioner filed a Motion for Reconsideration which was denied on March 9, 2000. On March 10, 2000 an emergency Application for Stay Enforcement of Judgment Pending consideration of Petition for Writ of Certiorari to the United States Supreme Court was filed. It was denied on March 10, 2000.

REASONS FOR GRANTING THE WRIT

I. THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED BECAUSE THE SUPREME COURT OF GEORGIA HAS SANCTIONED A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY THE LOWER COURT AS TO CALL FOR THE EXERCISE OF THE SUPREME COURT'S POWER OF SUPERVISION

The proceedings below departed from the usual and accepted course of Judicial Proceedings in several respects. First and foremost is the fact that the trial court did not have jurisdiction to enter a contempt order. Petitioner was never served with the second Motion for Contempt.

Secondly the deposition, was scheduled in Cobb County. According to O.C.G.A. § 9-11-37(a)(1), an application for an order to a deponent who is not a party shall be made to the court in the county where the deposition is being taken. Further § 9-11-37(b)(1) states that, failure to comply with order. Sanctions by Court in County where deposition is taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court. In the present case contempt could only lie in Cobb County. Therefore, the trial court did not have jurisdiction to enter a contempt order respecting the deposition of Petitioner.

Furthermore, the trial court refused to enter its December 15, 1999 order which ordered that Petitioner show up for deposition on December 21, 2000, until Petitioner filed a

Mandamus and Prohibition Motion. However, since the order was filed within thirty or forty minutes of the scheduled deposition unknown to Petitioner's counsel, it thwarted Petitioners right to a direct appeal or appeal by application.

The trial court departed from the accepted and usual course of judicial proceedings by ruling on Petitioners Motion to recuse even though Petitioner met the threshold requirement that the Motion be heard by another judge.

II. O.C.G.A. § 5-6-35(a)(2) IS VAGUE AND AMBIGUOUS AS APPLIED TO NON PARTY WITNESSES IN CONFLICT WITH FIFTH AMENDMENT RIGHT TO DUE PROCESS AND IS THEREFORE REPUGNANT TO THE UNITED STATES CONSTITUTION

The application of § 5-6-35(a)(2) to other than parties to a divorce action is repugnant to the Constitution. There has been no notice of application of this code section to non-party witnesses from a case law or legislative history standpoint. O.C.G.A. § 5-6-35(a)(2) addresses issues of alimony and child custody. In applying this statute the court has held that any party who seeks to appeal a judgment or an order entered in a domestic relations case must follow the procedures set out in same said code section. *Horton v. Kitchens*, 259 Ga. 446, 383 S.E.2d 871 (1989). It does not address what non-party witnesses are to do.

O.C.G.A. § 5-6-35(a)(2) by its very nature contemplates appeal issues involving party spouses. Therefore, any reference to contempt matters within O.C.G.A. § 5-6-35(a)(2) appears to be contempt actions involving party spouses.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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